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Power Lines and Pipelines: Accommodating the Agricultural Interest

D.L. Uchtmann
and M. A. Schreck



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This circular was prepared by D.L. Uchtmann, Assistant Professor and Extension Specialist of Agricultural Law, and M.A. Schreck, Research Assistant, Department of Agricultural Economics, University of Illinois at Urbana-Champaign.

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THE PRODUCTION OF ENERGY is an important concern of our nation. In addition to finding less expensive and more efficient energy supplies, the nation's energy industries are involved in planning efficient and inexpensive methods for transporting and distributing energy and energy resources. Currently thousands of miles of pipelines and power lines crisscross the country for the distribution of oil, natural gas, petroleum products, and electricity. In order to acquire the land needed for pipelines and power lines, public utility companies purchase rights-of-way across private property. The public utility right-of-way is essentially an easement for the purposes of constructing and maintaining a utility line.

Many landowners are uncertain how to respond to the utility company that wishes to purchase a utility line right-of-way across their land. Questions often arise whether the utility line is necessary, whether the particular route is necessary, whether the utility line would adversely affect land use and land values, and whether the price offered by the public utility for the right-of-way is a fair price. The purpose of this circular is to help answer these and similar questions and to familiarize the Illinois landowner with the legal alternatives available to him when a utility company wishes to purchase a right-of-way. This circular is not meant as a substitute for legal counsel. The landowner will find, in fact, that the more he knows of his rights and the rights of the utility company, the more likely he may want his attorney's advice in the transaction.

Utility Company Practices

All citizens benefit from the services provided by public utilities. Public utilities provide oil, gas, electricity, telephones, and other products and services that are now considered necessary for modern living. Because utility companies serve the public interest, Illinois regulates many of the activities of public utilities by placing them under the control of the Illinois Commerce Commission. The commission regulates rate making, the construction, operation and maintenance of utility facilities, and certain other activities of Illinois public utilities. When a public utility wishes to construct new facilities, it must generally obtain the approval of the commission in the form of a certificate of public convenience and necessity. The Illinois Commerce Commission

staff investigates the utility company's proposal, and the commission holds public hearings to consider the utility's proposal and to obtain the opinions of landowners and others affected by the proposed facilities. In certain limited circumstances, such as extensions and replacements of existing utility facilities, no approval from the commission is required.

A utility company often begins acquiring rights-of-way for a new utility line even before obtaining approval. The utility company first determines who owns the lands affected by the utility line and then sends representatives to contact the landowners. The representatives may explain the nature of the new pipeline or power line, the location of the route, and the effect the utility line would have on land productivity and land value. The utility representatives then may offer the landowner an easement contract which includes a price for the right-of-way. The contract may either set a specified amount to compensate the landowner for construction damage, or may contain a commitment by the utility company to compensate the landowner for damages resulting from the construction and operation of the utility line.

The price for the right-of-way may be based on the length and width of the route, the number of utility structures constructed on his land, and the general economic impact of the utility line upon farming operations. Because the landowner would be able in many instances to resume full use of the land after the line is installed, the offering price *may* approximate up to 50 percent of the full value of the land. In other cases where land use would be considerably restricted, the utility company may offer as much as the full value of the land. An electric company, for example, might offer the full fee value for the land underneath electric towers. In fact, some electric utilities follow the practice of purchasing fee corridors for their lines and then leasing the corridor back to the farmer for agricultural use compatible with the utility line.

If the landowner refuses to convey the right-of-way on the terms offered by the utility company, then the utility company can apply for approval from the Illinois Commerce Commission to exercise the right of eminent domain and condemn the land for the right-of-way. The utility company must first obtain a commission certificate of public convenience and necessity for the utility line and the route location. Then the utility company must prove that it has made a diligent effort

to purchase the right-of-way from the landowner. Again the commission will investigate and hold public hearings. If the utility company proves its case, then the commission will issue an order authorizing construction, and the utility company can sue in court to condemn the right-of-way. Since the cost of the right-of-way is reflected in the utility's rates and is paid for by all of its customers, the utility company may resort to condemnation rather than pay an unreasonable price for the right-of-way. Utility companies prefer not to condemn, however, because the litigation is expensive and time consuming, and may create bad feelings in the community.

Physical Effects of a Utility Line

The landowner approached by a utility company wishing to purchase a right-of-way should first determine what effects the utility line would have on his land. The landowner should obtain as much information from the utility company representative as is available. The utility company can explain the nature of the utility line, the voltage of the power line, or the substance that will be transmitted through the pipeline. The utility company representative can provide the landowner with a map of the route and, in most instances, the location of above-ground structures. If the utility company representative does not have the answers to the landowner's questions, then the landowner should request that the representative return with the information. Sometimes a utility company contacts landowners before finally deciding upon the exact location of the route, the location of above-ground structures, the date of utility line construction, and similar details. These matters, however, would have an effect on land use, and the landowner may not wish to sign a contract unless the decisions are final. The landowner should therefore be familiar with the characteristics of utility lines before negotiating with the utility company.

Electrical Transmission Lines

Electric power lines usually carry 138,000 volts, 345,000 volts, or 765,000 volts. The lines with extra-high voltage cause induced voltages of two types: electrostatic and electromagnetic. Anyone touching an ungrounded metal object in the vicinity of the transmission line might possibly experience a slight electric shock. The utility company can con-

trol the induced voltage by setting a proper ground clearance for the power lines and by grounding the metal objects located in the right-of-way strip. Electromagnetic induction can also affect paralleling pipelines, railroad facilities, and other power lines, but this interference is generally not a problem for the farmer.

Electrical transmission lines can produce noise which is usually caused by damaged insulators or by surface imperfections and foreign matter on the conductors. The utility company should investigate complaints of noise and try to eliminate the problem. Similarly, the utility company should minimize interference with radio and television reception that may be caused by the transmission lines. If the cause of radio or television interference is the location of the power line relative to the receiving antenna, the utility company can relocate the antenna to reduce the problem.

The utility company generally selects both the utility line route and the location and type of electrical structures, attempting to minimize costs of installations and maintenance. Keeping costs low benefits all of the utility's customers. The company usually works with the landowner, however, to locate structures where they will not hinder the use of his land. Most landowners prefer that the right-of-way be located along boundary lines, fences, or hedge rows rather than diagonally across crop or pasture land. Electrical structures are likely to interfere with planting, cultivating, and harvesting, and might interfere with aerial seeding and crop-dusting. The area around the base of electrical structures could become a breeding ground for insects and pests. Thus the landowner might prefer that the structures be located in the corners of fields or along the borders.

Electric companies often prefer to use four-legged steel tower structures because they are less expensive than single-shaft pole structures. The steel towers, however, take up more land, and many landowners prefer that the electric companies use single-shaft poles. Guy wires, if they are required, also take up land and interfere with farming operations in the area around the electrical structures. Some utilities use two-pole wood or metal H-frame structures in addition to steel towers and single-shaft metal structures.

Pipelines

Pipelines are used to transport a variety of substances, including natural gas, crude oil, propane, kerosene, and gasoline. Slurry pipelines

are used to transport solid substances such as coal, copper, and limestone by mixing these substances with water. Although the pipeline is buried sufficiently below the ground so that it will not interfere with cultivation, the pipeline company is also required by law to install certain above-ground structures. Markers are placed along the pipeline system whenever necessary to identify the location of the pipe in order to reduce the possibility of external damage. The pipeline company may want to install a valve, pump, telephone system, or other above-ground facilities.

The pipeline company also installs electrical test leads on the land surface to determine the effectiveness of its cathodic corrosion protection system. The outside of the pipe is coated with magnesium anodes that will decay before the steel pipe decays. The electrical test leads are used to determine when the magnesium has deteriorated.

If installed in productive areas, test leads, markers, valves, and other above-ground structures will interfere with farming operations. If possible, the utility company will locate these above-ground structures at accessible points along field boundaries.

Federal regulations require the utility company to provide a minimum depth of cover for the pipeline depending on the soil conditions, the location of the pipeline, and the type of pipeline. Pipeline companies generally provide three feet of cover in normal soil and two feet of cover in consolidated rock, although less cover is required. If the pipe is located in an area that is regularly flooded, erosion may reduce the amount of cover.

A properly maintained pipeline presents very little danger. Pipeline accidents, although rare, are usually caused by outside forces rather than by corrosion or construction defects. In many cases, excavators fail to determine the precise location of the pipe or incorrectly estimate the accuracy of their excavation equipment. The landowner should be familiar with the location and depth of every pipeline on his property, and he should contact the pipeline company *before* he digs in the right-of-way strip. Even a minor scratch to the pipe can cause damage to the cathodic protection system and accelerate corrosion. Because the pipe can withstand a minor blow if the pipeline company is contacted immediately, the landowner should know of an emergency telephone number by which to contact the company.

Depending upon the substance transported in the pipeline, the pipeline can generate enough heat to affect the area of the right-of-

way. The heat may be powerful enough to eliminate winter frost over the pipeline. The heat and dryness could promote pest life in the winter and disturb crop productivity during the growing season.

Construction and Maintenance Effects of Utility Lines

Before installing the utility line, the utility company usually surveys the right-of-way and plants survey stakes in the ground. Once the utility company has obtained a certificate of public convenience and necessity from the Illinois Commerce Commission, the company has a right to enter property for survey purposes *after* it has given the occupant thirty days notice of its intent to do so. The utility company must repair any damage that it does while surveying the property. When construction begins, the utility company may have to remove fences to get to the right-of-way and, if roads are unavailable, the company may have to cross crop and pasture land.

Utility line installation usually affects such farming operations as the herding of livestock and crop rotation. Land features and soil conditions may also be disturbed. Pipeline installation, and the installation of some electrical structures, generally involves the cutting and reconnecting of drainage tiles. After installation, rocks sometimes move to the surface and hinder farming operations. The impairment of drainage systems and the presence of rocks and other surface debris are two of the major complaints of farmers.

Utility companies seldom require a permanent access road for the maintenance of utility lines. Pipelines are generally patrolled aerially and the cathodic protection system is inspected through the test leads. Trees around power lines, however, must be trimmed when necessary, and pipeline right-of-way must be kept clear of large foliage, such as trees, to protect the integrity of the pipeline and to make aerial inspection possible.

Other Physical Effects

Utility line failures and accidents are rare. For example, pipelines are generally much safer than alternate modes of transportation, such as trucks, trains, and barges. If accidents or failures do occur, however, they can be very damaging to the landowner. A leak in an oil or petroleum pipeline can result in water pollution or long-term soil damage. If a gas pipeline should leak, the gas would escape into the air

and could possibly explode if exposed to an ignition source. If a power line should fall, it could cause a fire or possibly an electrocution. These accidents are rare, however, and sometimes are caused by unavoidable natural conditions, such as winter storms. Sometimes the landowner can prevent accidents by being careful and alert in his operations, and by contacting the utility company *before* he digs in the right-of-way strip.

The landowner should thoroughly question the utility company concerning the effects the utility line will have on his land. If necessary, the landowner may want to seek the advice of an engineer or a land and soil expert. In addition, he should seek the advice of other landowners who have utility lines across their property, who have previously dealt with utility companies, or who will also be affected by the proposed utility line. Whether the utility line will affect the value of his property in the marketplace depends on the particular characteristics of his land, soil, crop production, and farming operations. Thus the landowner may be interested in obtaining the advice of real estate appraisers who are familiar with his property or similar property, and the effects of utility lines. Other information may be available from the Illinois Commerce Commission in Springfield.

Legal Rights and Responsibilities

When the utility company acquires a right-of-way, either by purchase or by condemnation, the utility company becomes the dominant owner of the easement and the landowner becomes the servient owner. The rights of the utility company are paramount to the rights of the landowner, but only so far as necessary for the proper use of the utility line. The utility company may use the easement strip for all utility line operations, but may not unreasonably interfere with the operations of the landowner. The landowner, on the other hand, has the right to use the right-of-way for all purposes not inconsistent with or damaging to the utility line. Frequently, the respective rights of the utility and the landowner are spelled out in the right-of-way contract.

The utility company's rights include the right to construct, operate, inspect, maintain, and repair the utility line. The utility company has the right of access to the easement strip, and may use established roads or routes that will cause the least damage and inconvenience to the landowner. If necessary, the utility company may remove fences or

install gates, clear land, and damage crops. The utility company is liable for the damages it causes, and the landowner may be compensated in the condemnation award or according to the right-of-way contract.

The utility company also has the right to remove trees and brush that obstruct its operations in the right-of-way. The utility company may also install additional facilities that are reasonably necessary for the utility line operations. A pipeline company, for example, may install telephone lines, drips, valves, and markers.

The utility company is responsible for proper care in construction and maintenance. Pipelines passing through cultivated land must be buried and the surface land must be restored to its original condition. The landowner has the right to compensation for the negligence of the utility company resulting in damage to property or interference with the use of land. A utility company must use reasonable care commensurate with the dangerousness of the utility line, and must protect the public from foreseeable injury caused by the operations of the utility line. A pipeline company, for example, must mark the location of the pipeline, regularly inspect for leaks, and adequately repair damaged pipe.

The federal government has established safety standards for natural gas pipelines and for oil and petroleum pipelines. These standards apply to pipeline design, construction, maintenance, and corrosion control. Federal regulations require linemarkers over each buried pipeline at public road crossings, railroad crossings, and in sufficient number along the remainder of the pipeline so that its location is accurately known. A communication system is required to insure the transmission of information necessary for safe operations, and regular inspection schedules are required to insure the detection of leaks. The Illinois Commerce Commission has established safety standards for the proper construction of electrical transmission lines. These federal and state standards are designed to protect the public and promote responsible utility line operations.

Negotiating the Right-of-Way Contract

The landowner has an opportunity to assert his rights and protect his interests when the utility company first offers to negotiate a contract for the purchase of the right-of-way. The right-of-way contract provides

the landowner with the means of controlling the effects of the utility line on his property and of establishing the responsibilities of the utility company to protect the land and pay for damages. The utility company will usually provide the landowner with a standard form easement contract that describes the rights and responsibilities of both parties. In addition, the landowner can request that special clauses be added to the contract to take care of specific conditions.

The Standard Form Easement Contract

The typical easement contract provides the utility company with the right to construct, operate, maintain, repair, remove, and relocate the utility line. The utility company also has the right of access to the right-of-way for utility line purposes, and the right to remove obstructions. The landowner has the right to use the right-of-way for all purposes that will not interfere with the utility line. The standard easement contract also provides that the utility company will compensate the landowner for damages caused by the utility line and the operations of the utility company.

The standard easement generally reflects the rights of both parties as dominant and servient owners. In addition, the utility company might include a clause that specifically limits certain activities of the landowner in the right-of-way strip, such as drilling a well or constructing a building. The utility company may also include provisions for constructing additional facilities or for obtaining additional space during construction.

Special Clauses

The landowner can use the easement contract to limit the rights and clearly define the responsibilities of the utility company. Often the utility company will oblige the landowner and include provisions that will promote the protection of his property. In some areas, however, the utility company and the landowner may have conflicting interests, and the landowner will have to bargain for the control and the rights he desires.

The utility company typically requests a perpetual easement. The landowner, however, may want a provision to the effect that easement rights will terminate, and that the utility company will reconvey the right-of-way, if and when the utility line is no longer in operation. The

utility company typically requests that it have the right to assign the right-of-way to another utility company. The landowner, on the other hand, may want to control assignment by requiring that the utility company first obtain his consent.

The easement contract should specify the purpose and characteristics of the utility line: voltage of the power line, type of electrical structures, height of wires, purpose of pipeline, size of pipe, additional above-ground structures, and similar details. The landowner may want the electric utility company to install single-shaft pole structures instead of steel towers, and to set the height of wires so as not to interfere with aerial seeding and crop-dusting. The landowner may also want to restrict or prohibit the installation of additional above-ground facilities on his property.

In the case of a pipeline easement, the landowner may want to require the utility company to obtain his consent or pay additional consideration before it may change the size of the pipe or install additional pipelines in the right-of-way. The contract should also specify the depth of pipeline cover. Most landowners want the pipeline buried deep enough so that it will not be damaged by normal farming operations; landowners usually request four or five feet of cover. Arrangements should be made so that the pipeline will not interfere with tile drains.

Location

The easement should specify the location and width of the right-of-way. In some cases the utility company may not yet have determined the precise location and may want to reserve that decision exclusively. The landowner, however, may want to provide that the utility company obtain his consent to the location of the utility line. Similarly, the location of electrical structures and other above-ground structures is important. Most landowners prefer that power lines be located along boundaries and not across productive land.

Major cross-country transmission pipelines usually must follow a direct path because bends are very costly. Smaller distribution or service lines, on the other hand, can follow roads and boundary lines with little problem. Pipeline markers, test leads, valves, and other aboveground structures may interfere with land use, and the landowner may want to provide that they be located at field boundaries and not in productive

areas. At times, utilities may not be able to comply with such requests because of legal or operational restrictions on the placement of facilities.

Access

Rather than permit the utility company to enter the easement strip by any route causing the least possible damage and inconvenience, the landowner may want to specify the access routes and limit the utility company to use of the right-of-way and existing public and private roads, if such are available. The contract could also provide that the utility company repair roads damaged by its operations and contribute to the maintenance of access roads. The landowner may also want a provision requiring that the utility company install gates rather than remove fences, and that enclosures be maintained at all times to protect livestock and crops.

Land Restoration

Landowners are particularly concerned that the utility company satisfactorily restore their land to its original condition following construction and other operations of the utility line. Improper soil restoration will result in reduced crop productivity, and improper restoration of land features could result in erosion and environmental damage. The landowner should require land restoration of areas damaged by utility line operations both on and off the right-of-way. The contract could provide for specific restoration procedures, such as the separation and replacement of the topsoil where required to restore productivity, the removal of debris, and proper fertilization.

Pipeline construction generally causes rocks to rise to the surface. The landowner could provide that rocks exceeding a certain diameter shall be removed by the utility company. The size could be 2 or 3 inches, or any size that might unreasonably interfere with farming.

Pipeline construction often involves the cutting and reconnecting of drainage tiles. If the tiles are not properly and promptly reconnected, farming operations could be seriously impaired. The landowner may want to require the utility company to follow specific drainage repair procedures and restore the drainage system to the landowner's reasonable satisfaction. Utility companies are generally willing to repair drainage tiles that fail to function properly.

Utility line construction and maintenance requires the removal of trees, branches, and brush that obstruct the right-of-way. Landowners are concerned that the utility company restore land features, fill and reseed waterways, remove brush and refuse wood, and prevent soil erosion. The contract can provide for restoration of specific conditions and locations.

Damages

The typical right-of-way contract provides that the utility company compensate the landowner for damages to crops, fences, and improvements. This provision, however, may be too restricted. The landowner can specify other damages, such as to soil, livestock, or persons. A better alternative would be a general clause requiring the utility company to pay for any loss, property damage, and personal injury resulting from construction or operation of the utility line.

The landowner may also want a provision that the utility company indemnify him against claims for damages and injuries suffered by other persons as a result of the utility line. The indemnification clause might be extended further to cover damages resulting from the negligence of the landowner with respect to the utility line, although it is unlikely that a utility would agree to such a provision.

The utility company might require the landowner to present damage claims within a specific period of time, for example, within 30 days after the damages accrue. The landowner may want a similar deadline for payment of the damage claim and for repairs and restoration. If the landowner and the utility company expect that the amount of damages may be in dispute, the contract could also provide an arbitration clause for the ascertainment of damages. Each party, for example, could appoint one disinterested person, and the two would appoint a third person. The award of the three arbitrators would be binding on both parties.

Bargaining for a Favorable Easement

Utility companies are generally willing to accommodate the reasonable concerns of landowners for the protection of their property. The utility companies usually prefer to purchase the right-of-way and not condemn it. But they also try to retain as much control and freedom as possible, and may not give in to landowners' demands regard-

ing location, access, and types of structures. The landowner should be reasonable and patiently explain his concerns to the utility company representative. The landowner may want the aid of an attorney to draft contract provisions that would not present problems if a dispute should arise later. The attorney could also aid the landowner in negotiating contract provisions and presenting the concerns of the landowner to the utility company.

If the utility company refuses to accommodate the landowner's interests with regard to location, access, and the type of structures, then the landowner can present his interests before the Illinois Commerce Commission during the proceedings concerning the proposed utility line. If the landowner and the utility company cannot agree on a price for the right-of-way, then the utility company will seek permission from the commission to institute condemnation proceedings. In the condemnation suit the landowner can request that a jury decide the fair compensation for the right-of-way.

Illinois Commerce Commission Proceedings

In nearly all cases, the utility company must obtain a certificate of public convenience and necessity before it may construct a new utility line. Furthermore, before the utility company can exercise eminent domain powers, it must also obtain an order authorizing the construction of the utility line. The proceedings to issue the certificate are known as Section 55 proceedings, and the proceedings to obtain an order are known as Section 50 proceedings. For both proceedings the Illinois Commerce Commission attempts to notify all landowners who may be affected by the proposed utility line, and holds public hearings to consider the utility proposal and to obtain the opinions of landowners and others. The identities of affected landowners are determined from tax records, but because this system is not perfect, the landowner should find out for himself the date and location of the public hearings.

Landowners are encouraged to participate actively in the commission proceedings. Landowners can participate formally by filing a petition as an intervening party to the utility company's application. The commission will determine whether the petition will be granted, but in normal situations landowners are allowed to intervene. As an interven-

ing party, the landowner, through his attorney, can offer documentary evidence, present witnesses, and cross-examine the utility company's witnesses. The landowner may be allowed to participate as an intervening party without an attorney, provided that he conducts himself as an attorney would. All witnesses testify under oath and may be cross-examined by the other parties and by the commission examiner and staff. Landowners can also participate informally by appearing at the public hearings and stating their opinions. They would not be sworn under oath or subject to cross-examination. The staff of the Illinois Commerce Commission is willing to advise and inform landowners of the rules by which they can participate.

Section 55 Proceedings

The utility company applying for a certificate of public convenience and necessity must prove that the utility line is in the public interest. The utility company must also prove that the utility line route location is reasonable, considering the particular features and uses of the lands that will be affected.

A landowner may challenge the utility company's proof that the utility line is in the public interest, or that the route is reasonable. He could argue, for example, that electrical energy could be supplied from a closer source along a different route, or that another transportation method is more reasonable than the proposed pipeline. The Illinois Commerce Commission has an engineering staff that investigates the utility company's proposals. Also, some landowners have pooled their resources, formed interest groups, and employed their own engineers.

If the commission finds that the utility line is in the public interest, the landowner may still be able to effect changes in the utility line project. The landowner can request that the commission limit the width of the right-of-way to only that which is necessary. The landowner can also request that the utility line be located along fence lines and boundaries in order to prevent damage to productive farm land. The Illinois Commerce Commission will consider the concerns of landowners and the protection of productive farm land. In recent cases the commission has rerouted some utility line locations to minimize adverse effects on farming operations and to protect heavily wooded areas. Where additional costs were not prohibitive, the commission has accepted landowners' requests that electric utility companies install single-

shaft electrical poles instead of four-legged steel towers so that less land will be taken. The landowner should be prepared to justify his requests and to offer reasonable alternatives. Often the commission will accommodate landowners with route or structure changes so long as the changes do not increase the project cost significantly.

Section 50 Proceedings

Before a utility company can condemn land for a right-of-way, it must obtain a Section 50 order. The utility company must prove that it has made a good faith effort to acquire the necessary right-of-way by voluntary acquisition and that the landowner, to date, has refused to sell. The utility must also establish that all of the land sought is actually needed for the construction, operation, and maintenance of the line.

Again, the Illinois Commerce Commission will notify landowners who have not reached an agreement with the utility and hold public hearings. A landowner may contest the utility company's assertions that the right-of-way is in the public interest. The landowner may also attempt to prove that the utility company did not act in good faith during negotiations for the right-of-way contract. Generally the commission does not consider disagreements concerning the price because a fair price will be determined in the condemnation proceeding. The landowner could argue, however, that the utility company refused to negotiate certain important contractual clauses and intimidated him with the threat of condemnation.

Condemnation Proceedings

Most landowners prefer to sell the right-of-way rather than have their land condemned because condemnation litigation is expensive and time-consuming. But if the landowner believes that the utility company is not offering a fair price for the right-of-way, then a condemnation proceeding in the circuit court is his opportunity to litigate fairly the question of compensation. The landowner should not feel too intimidated by the possibility of condemnation because condemnation is just as unattractive to the utility company as it is to the landowner. For both parties, the award of compensation in a condemnation suit is difficult to predict.

Defenses to Condemnation

The landowner can raise many of the same challenges in the condemnation suit as he could in the proceedings before the Illinois Commerce Commission. He can challenge the necessity for the utility line, the reasonableness of the route location, and the width of the right-of-way. The court will consider the issue of whether the taking of property is necessary for a public purpose. The fact that the commission had issued the certificate of public convenience and necessity will be strong evidence in favor of the utility company, but it is not conclusive. The court will consider if the utility company is taking more land than it needs, and the landowner can petition that the width of the right-of-way be reduced, or that the utility company install single-shaft poles. The court may be reluctant, however, to consider these issues if they have already been decided by the commission, which has special expertise in the utility area.

The landowner can also challenge the authority of the utility company to condemn property in this particular case. Illinois public utilities have the right to exercise eminent domain under state statute. Public utilities include telephone and telegraph companies, oil and gas pipeline companies, and companies that furnish heat, light, power, and water. Electric cooperatives also have the right of eminent domain. Natural gas companies with interstate pipelines have eminent domain powers granted by the federal government, but they must obtain a certificate of public convenience and necessity from the Federal Energy Regulatory Commission. They may then initiate condemnation proceedings in either state or federal court. Coal companies and slurry pipeline companies with interstate pipelines do *not* have eminent domain powers in Illinois; however, legislation has been enacted in several other states to provide eminent domain powers to slurry pipelines. Similar legislation has also been introduced in Congress.

The landowner can also argue that the utility company did not attempt to agree on the price of the right-of-way. The court will not require a good faith effort (as in the Section 50 proceeding), but only that the utility company made a bona fide offer which the landowner either refused or left unanswered. If the utility company failed to make an offer, then the landowner can raise this defense before trial. If the landowner first goes to trial on the issue of compensation, then the defense of failure to attempt to agree, as well as other defenses, is waived.

Compensation in Condemnation Proceedings

The landowner is entitled to be compensated for the reasonable value of the land that the utility company will take. In right-of-way condemnation cases where the landowner may continue to use the right-of-way for purposes consistent with the utility line, the landowner will be compensated for the depreciation in the fair market value of the easement strip. Compensation may be more or less than the amount offered by the utility, and the utility is not bound by any offers concerning price or contract terms that it may have made during earlier negotiations.

The landowner may also be able to recover for damages to the remainder of his land not included in the right-of-way. To recover damages to the remainder, the landowner must prove a physical disturbance of rights he had enjoyed in the use of his land. The damages must be direct and cannot be merely possible or conjectural. The following have been considered damages to the remainder: damages to crops and livestock, damages to fences and roads, restricted farm machine use, obstruction of drainage, weeds and insects around the base of electrical structures, and additional labor required for farming operations. Compensation for damages to the remainder are based on the depreciation of the fair market value of the property taken as a whole.

Damages to the remainder may be difficult to prove and cannot include the possibility of remote injury, such as the danger of pipeline leaks. The courts presume that the utility company will operate the utility line carefully and prudently. If the landowner can prove that the fear of danger is real, however, and that such fear has affected land buyers and caused a depreciation in the market value of his property, then the landowner may be able to recover that depreciation in market value.

Because condemnation litigation is specialized, the landowner should seek expert legal assistance. The landowner should obtain real estate appraisals from those with first-hand knowledge of the landowner's property or similar property affected by a utility line. Pipeline or electrical engineers may also aid in understanding and proving the adverse effects of the utility line. For more information regarding condemnation, the landowner should refer to Circular 974, *Condemnation: The Public Taking of Illinois Farm Land*, available from the University of Illinois Cooperative Extension Service.

Conclusion

The landowner has several means of protecting his interests, but he should act promptly in order to preserve his alternatives. If he wishes to challenge the need for the utility line, he should participate in the proceedings before the Illinois Commerce Commission. The proceedings of the commission are also useful to effect changes in the location and type of utility structures. If he is still dissatisfied, the landowner can challenge the utility line in a condemnation suit. With the help of an attorney, the landowner can evaluate the costs of litigation and the chances of success.

The landowner who wishes to protect his property and minimize the adverse effects of the utility line may be able to negotiate a favorable right-of-way contract with the utility company. The contract can define the utility company's responsibilities for land restoration and damage payments, and limit access and other rights of the utility company. The landowner can also present his position to the commission in Sections 55 and 50 proceedings if the utility company fails to agree with him on the location of the route, the location of structures, or the type of structures.

Finally, if the landowner is dissatisfied with the price offered by the utility company, he can litigate the issue of compensation in a condemnation suit. Condemnation litigation may be expensive and time consuming, but the landowner should not be afraid to litigate if necessary. On the other hand, the landowner may be in a better position if he can negotiate a favorable right-of-way contract that assures him of protection for his land and compensation for damages and injuries that may occur later. Condemnation results in a single lump sum award, which may be more or less than the amount offered by the utility, and creates bad feelings between the utility company and the landowners who have to share the right-of-way. By negotiating a favorable easement, the landowner can develop a working relationship with the utility company and clearly define the rights and responsibilities of both parties. The landowner should determine the interests he wishes to protect and then evaluate the alternatives for achieving success.



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